

[First Reprint]

**SENATE, No. 2783**

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**STATE OF NEW JERSEY**

**211th LEGISLATURE**

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INTRODUCED NOVEMBER 10, 2005

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**District 17 (Middlesex and Somerset)**

**Co-Sponsored by:**

**Assemblymen Hackett, Manzo and Conaway**

**SYNOPSIS**

Raises minimum age for sale and purchase of tobacco products from 18 to 19.

**CURRENT VERSION OF TEXT**

As reported by the Senate Health, Human Services and Senior Citizens Committee on December 1, 2005, with amendments.

(Sponsorship Updated As Of: 1/10/2006)

1 AN ACT concerning penalties for the sale or distribution of tobacco  
2 products to persons under 19 years of age and revising parts of the  
3 statutory law.

4  
5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

7  
8 1. Section 1 of P.L.2000, c.87 (C.2A:170-51.4) is amended to read  
9 as follows:

10 1. a. No person, either directly or indirectly by an agent or  
11 employee, or by a vending machine owned by the person or located in  
12 the person's establishment, shall sell, offer for sale, distribute for  
13 commercial purpose at no cost or minimal cost or with coupons or  
14 rebate offers, give or furnish, to a person under [18] 19 years of age,  
15 any cigarettes made of tobacco or of any other matter or substance  
16 which can be smoked, or any cigarette paper or tobacco in any form,  
17 including smokeless tobacco.

18 b. The establishment of all of the following shall constitute a  
19 defense to any prosecution brought pursuant to subsection a. of this  
20 section:

21 (1) that the purchaser of the tobacco product or the recipient of the  
22 promotional sample falsely represented, by producing either a driver's  
23 license or non-driver identification card issued by the New Jersey  
24 Motor Vehicle Commission [in the Department of Transportation],  
25 [or] a similar card issued pursuant to the laws of another state or the  
26 federal government of Canada, or a photographic identification card  
27 issued by a county clerk, that the purchaser or recipient was of legal  
28 age to make the purchase or receive the sample;

29 (2) that the appearance of the purchaser of the tobacco product or  
30 the recipient of the promotional sample was such that an ordinary  
31 prudent person would believe the purchaser or recipient to be of legal  
32 age to make the purchase or receive the sample; and

33 (3) that the sale or distribution of the tobacco product was made  
34 in good faith, relying upon the production of the identification set  
35 forth in paragraph (1) of this subsection, the appearance of the  
36 purchaser or recipient, and in the reasonable belief that the purchaser  
37 or recipient was of legal age to make the purchase or receive the  
38 sample.

39 c. A person who violates the provisions of subsection a. of this  
40 section, including an employee of a retail dealer licensee under  
41 P.L.1948, c.65 (C.54:40A-1 et seq.) who actually sells or otherwise

**EXPLANATION** - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup> Senate SHH committee amendments adopted December 1, 2005.

1 provides a tobacco product to a person under 19 years of age, shall  
2 be liable to a civil penalty of not less than \$250 for the first violation,  
3 not less than \$500 for the second violation, and \$1,000 for the third  
4 and each subsequent violation. The civil penalty shall be collected  
5 pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274  
6 (C.2A:58-10 et seq.), in a summary proceeding before the municipal  
7 court having jurisdiction. An official authorized by statute or  
8 ordinance to enforce the State or local health codes or a law  
9 enforcement officer having enforcement authority in that municipality  
10 may issue a summons for a violation of the provisions of subsection a.  
11 of this section, and may serve and execute all process with respect to  
12 the enforcement of this section consistent with the Rules of Court. A  
13 penalty recovered under the provisions of this subsection shall be  
14 recovered by and in the name of the State by the local health agency.  
15 The penalty shall be paid into the treasury of the municipality in which  
16 the violation occurred for the general uses of the municipality.

17 d. In addition to the provisions of subsection c. of this section,  
18 upon the recommendation of the municipality, following a hearing by  
19 the municipality, the Division of Taxation in the Department of the  
20 Treasury may suspend or, after a second or subsequent violation of the  
21 provisions of subsection a. of this section, revoke the license issued  
22 under section 202 of P.L.1948, c. 65 (C.54:40A-4) of a retail dealer.  
23 The licensee shall be subject to administrative charges, based on a  
24 schedule issued by the Director of the Division of Taxation, which may  
25 provide for a monetary penalty in lieu of a suspension.

26 e. A penalty imposed pursuant to this section shall be in addition  
27 to any penalty that may be imposed pursuant to section 3 of P.L.1999,  
28 c. 90 (C.2C:33-13.1).  
29 (cf: P.L.2003, c.175, s.1)

30

31 2. Section 7 of P.L.1966, c.36 (C.26:2F-7) is amended to read as  
32 follows:

33 7. (a) There is hereby established a special projects and  
34 development fund which shall consist of all funds appropriated or  
35 otherwise made available for the purposes set forth in this section.  
36 The commissioner, with the approval of the Public Health Council,  
37 may make grants from the special projects and development fund to  
38 local health agencies, to hospitals, and to voluntary health agencies to  
39 provide State health assistance for new health services and for special  
40 health projects in order to stimulate continued development of health  
41 services and to assure the citizens of New Jersey the benefits of the  
42 most advanced health protection techniques.

43 (b) Except as provided in subsection (c) of this section, grants  
44 from the special projects and development fund for specific purposes  
45 shall be made on an annual basis for a period not in excess of 5 years  
46 and such grants shall be in diminishing amounts during this period. The

1 commissioner shall determine the conditions applicable to each such  
2 grant including the extent of local financial participation to be  
3 required. Grants from the special projects and development fund to  
4 voluntary health agencies shall not exceed 40% of said fund.

5 (c) (1) Grants from the special projects and development fund shall  
6 be made on an annual basis to local health agencies for local  
7 enforcement efforts concerning the sale and commercial distribution  
8 of tobacco products to persons under the age of [18] 19 years, in an  
9 amount determined by the commissioner. The grants shall be  
10 distributed based on the number of cigarette retail dealer and vending  
11 machine licenses issued within a local health agency's jurisdictional  
12 authority in order to ensure Statewide coverage and Statewide  
13 consistency of enforcement efforts; except that the commissioner may  
14 designate up to 5% of available funds, annually, for incentive grants to  
15 local health agencies to enhance enforcement efforts.

16 Each grant recipient shall report quarterly to the commissioner on  
17 the number of compliance check inspections it has completed and the  
18 results of those compliance checks. The commissioner shall determine  
19 any other conditions applicable to the grants.

20 (2) Beginning in 1999, notwithstanding the provisions of paragraph  
21 (1) of this subsection to the contrary, the commissioner may make  
22 grants from the special projects and development fund to public and  
23 private local agencies to reduce teenage use of addictive substances.  
24 (cf: P.L.1995, c.320, s.1)

25  
26 3. Section 3 of P.L.1995, c.304 (C.2A:170-51.1) is amended to  
27 read as follows:

28 3. A person [18] 19 years of age or older who purchases a  
29 tobacco product for a person who is under [18] 19 years of age is a  
30 petty disorderly person.  
31 (cf: P.L.1995, c.304, s.3)

32  
33 4. Section 2 of P.L.1995, c.320 (C.26:3A2-20.1) is amended to  
34 read as follows:

35 2. a. The Commissioner of Health and Senior Services is  
36 authorized to enforce the provisions of section 1 of P.L.2000, c.87  
37 (C.2A:170-51.4) with respect to the prohibition on the sale and  
38 commercial distribution of tobacco products to persons under [18] 19  
39 years of age. The commissioner may delegate the enforcement  
40 authority provided in this section to local health agencies, subject to  
41 the availability of sufficient funding. The commissioner shall report  
42 quarterly to the Legislature on the enforcement program's progress,  
43 use of grants awarded pursuant to section 7 of P.L.1966, c.36  
44 (C.26:2F-7), results of enforcement efforts and other matters the  
45 commissioner deems appropriate.

46 b. The Department of the Treasury shall provide the commissioner

1 with information about retail tobacco dealer licensees necessary to  
2 carry out the purpose of this section.

3 (cf: P.L.2000, c.87, s.3)

4  
5 5. Section 3 of P.L.1999, c.90 (C.2C:33-13.1) is amended to read  
6 as follows:

7 3. a. A person who sells or gives to a person under ~~18~~ 19 years  
8 of age any cigarettes made of tobacco or of any other matter or  
9 substance which can be smoked, or any cigarette paper or tobacco in  
10 any form, including smokeless tobacco, including an employee of a  
11 retail dealer licensee under P.L.1948, c.65 (C.54:40A-1 et seq.) who  
12 actually sells or otherwise provides a tobacco product to a person  
13 under 19 years of age, shall be punished by a fine as provided for a  
14 petty disorderly persons offense. A person who has been previously  
15 punished under this section and who commits another offense under  
16 it may be punishable by a fine of twice that provided for a petty  
17 disorderly persons offense.

18 b. The establishment of all of the following shall constitute a  
19 defense to any prosecution brought pursuant to subsection a. of this  
20 section:

21 (1) that the purchaser or recipient of the tobacco product falsely  
22 represented, by producing either a driver's license or non-driver  
23 identification card issued by the ~~Division of Motor Vehicles in the~~  
24 ~~Department of Transportation~~ New Jersey Motor Vehicle  
25 Commission, a similar card issued pursuant to the laws of another state  
26 or the federal government of Canada, or a photographic identification  
27 card issued by a county clerk, that the purchaser or recipient was of  
28 legal age to purchase or receive the tobacco product;

29 (2) that the appearance of the purchaser or recipient of the tobacco  
30 product was such that an ordinary prudent person would believe the  
31 purchaser or recipient to be of legal age to purchase or receive the  
32 tobacco product; and

33 (3) that the sale or distribution of the tobacco product was made  
34 in good faith, relying upon the production of the identification set  
35 forth in paragraph (1) of this subsection, the appearance of the  
36 purchaser or recipient, and in the reasonable belief that the purchaser  
37 or recipient was of legal age to purchase or receive the tobacco  
38 product.

39 c. A penalty imposed pursuant to this section shall be in addition  
40 to any penalty that may be imposed pursuant to section 1 of P.L.2000,  
41 c.87 (C.2A:170-51.4).

42 (cf: P.L.2000, c.87, s.4)

43  
44 6. Section 2 of P.L.1987, c.423 (C.54:40A-4.1) is amended to read  
45 as follows:

46 2. Notwithstanding any other provision of law to the contrary, a

1 person to whom a license is issued pursuant to P.L.1948, c.65  
2 (C.54:40A-1 et seq.) shall, as a condition of the license, conspicuously  
3 post a legible sign at the point of display of the tobacco products and  
4 at the point of sale. The sign, which also shall be posted  
5 conspicuously on any licensed cigarette vending machine, shall be at  
6 least six inches by three inches in bold letters at least one-quarter inch  
7 high and shall read as follows:

8 "A person who sells or offers to sell a tobacco product to a person  
9 under [18] 19 years of age shall pay a penalty of up to \$1,000 and  
10 may be subject to a license suspension or revocation.

11 Proof of age may be required for purchase."

12 (cf: P.L.1995, c.304, s.2)

13  
14 17. Section 4 of P.L.2005, c.85 (C. 54:40A-49) is amended to read  
15 as follows:

16 4. A person shall not engage in a retail sale of cigarettes in this  
17 State unless the sale is a face-to-face sale, except that a person may  
18 engage in a non-face-to-face sale of cigarettes to a person in this State  
19 if the following conditions are met:

20 a. The seller has fully complied with all of the requirements of the  
21 Jenkins Act, 15 U.S.C. s.375 et seq., for shipments to this State;

22 b. The seller has verified payment of, paid, or collected all  
23 applicable State taxes, including the cigarette taxes imposed by the  
24 "Cigarette Tax Act," P.L.1948, c.65 (C.54:40A-1 et seq.) and the sales  
25 or use taxes imposed by the "Sales and Use Tax Act," P.L.1966, c.30  
26 (C.54:32B-1 et seq.), due on the cigarettes; and

27 c. The seller has, before mailing or shipping the cigarettes:

28 (1) obtained from the purchaser reliable confirmation that the  
29 purchaser is at least [18] 19 years old and a statement by the  
30 purchaser under penalty of perjury certifying the purchaser's date of  
31 birth and address;

32 (2) made good faith effort to verify the information contained in  
33 the certification provided by the purchaser against a commercially  
34 available database or has obtained a photocopy or other image of a  
35 government-issued identification bearing the purchaser's image and  
36 stating the date of birth or age of the purchaser;

37 (3) received payment for the sale from the prospective purchaser  
38 by a credit or debit card that has been issued in the purchaser's name  
39 or by check; and

40 (4) verified that a credit or debit card used for payment has been  
41 issued in the purchaser's name, and the address to which the cigarettes  
42 are being shipped matches the credit or debit card company's address  
43 for the cardholder.

44 Sellers taking an order for a non-face-to-face sale may request that  
45 prospective purchasers provide their e-mail addresses.<sup>1</sup>

46 (cf: P.L.2005, c.85, s.4)

1       <sup>1</sup>[7.] 8.<sup>1</sup> This act shall take effect on the 90th day after enactment;  
2   except that the Commissioner of Health and Senior Services may take  
3   such anticipatory administrative action in advance as shall be necessary  
4   for the implementation of the act.